

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OWEN W. BARNABY,

Plaintiff,

Hon. Robert J. Jonker

v.

Case No. 1:22-cv-1146

MICHIGAN STATE GOVERNMENT,

et al.,

Defendants.

ORDER

The Court has before it Plaintiff's Emergency Motion for Default Judgment against Defendant City of Benton Harbor for its Failure to File an Answer to Plaintiff's Second Amended Complaint or a Motion Under Rule 12. (ECF No. 88.) This is Plaintiff's fourth motion for entry of default judgment since this case was remanded by the Sixth Circuit. (*See* ECF Nos. 75, 77, and 81.) As set forth in the Court's December 27, 2023 Order Following Remand (ECF No. 91), Plaintiff's requests for entry of default judgment against all Defendants were improper because the Clerk has not entered a default against any Defendant. Moreover, regarding the City of Benton Harbor, the Court explained that it had granted the City's timely motion to extend its time to answer, and because the case was ultimately dismissed, the City was not required to file an answer. Nonetheless, because the Court has now granted Plaintiff leave to file his third amended complaint, the Court has granted the City 28 days to respond. (*Id.* at PageID.1124.) Again, there is no basis for entry of a default judgment.

Finally, Plaintiff's assertions that the doctrines of res judicata, collateral estoppel, and law of the case are applicable to his pre-appeal motions for entry of default judgment lack merit. The Court never ruled on those motions. Instead, it dismissed them as moot in light of its res judicata

and collateral estoppel findings. While the Sixth concluded that dismissal of the motions for mootness was improper, it in no way found the motions meritorious or determined that they did not fail for other reasons. In short, because Plaintiff's motions had not been considered on the merits prior to entry of the December 27, 2023 Order Following Remand, the doctrines he cites have no application here.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Emergency Motion for Default Judgment Against Defendant City of Benton Harbor (ECF No. 88) is **DENIED**.

Dated: December 29, 2023

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge